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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 RYAN BENTON,

12 Plaintiff,

13 v.

14 C. MALDONADO, et al.,

15 Defendants.  
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No. 2:23-CV-2882-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983. The action was originally filed in the San Joaquin County Superior Court and  
19 removed by Defendants to this Court. See ECF No. 1. Defendants did not file a responsive  
20 pleading in state court. See id. Pending before the Court is Plaintiff's motion for leave to file a  
21 first amended complaint. See ECF No. 6 (erroneously docketed as a first amended complaint).

22 The Federal Rules of Civil Procedure provide that a party may amend his or her  
23 pleading once as a matter of course within 21 days of serving the pleading or, if the pleading is  
24 one to which a responsive pleading is required, within 21 days after service of the responsive  
25 pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a motion under Rule  
26 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all  
27 other situations, a party's pleadings may only be amended upon leave of court or stipulation of all  
28 the parties. See Fed. R. Civ. P. 15(a)(2). Here, no responsive pleading has been filed. Therefore,

1 leave of court is not required and Plaintiff is free to file a first amended complaint. If, however,  
2 no first amended complaint is filed within 30 days of the date of this order, the Court will proceed  
3 to review the sufficiency of Plaintiff's original complaint filed in state court. Should the Court  
4 direct service and should Defendants file a responsive pleading, Plaintiff may be required to seek  
5 leave of court to amend.

6 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for leave to  
7 amend, ECF No. 6, is DENIED as unnecessary.

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10 Dated: January 12, 2024



11 DENNIS M. COTA  
12 UNITED STATES MAGISTRATE JUDGE  
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